IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1724 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

CHUNASA DHARAMSHI PATOLIA

Appearance:

1. First Appeal No. 1724 of 1988

Mr. B.Y. Mankad, AGP, for the appellant

Ms. Mita S. Panchal, for NANAVATY ADVOCATES for Respondent No. 1-3

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE K.A.PUJ

Date of decision: 17/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The appellant, by filing this appeal under Section 54 of the Land Acquisition Act, 1894 ('Act' for short), has challenged the judgment and award dated

February 9, 1988, passed by the learned Extra Assistant Judge, Junagadh, in Land Reference Case No.2 of 1985.

2. The respondents are the owners of the agricultural lands bearing Survey No.6/1(paiki) admeasuring 3 Hectares-10Are-25 sq.mtr., Survey No.5 admeasuring 11 Hectares-19 Are-25 sq.mtrs. and Survey No.48 admeasuring 0 Hectare-39 Are-65 sq.mtrs. in the sim of village Sukhpur, Taluka Bhesan, District Junagadh. The State Government had decided to acquire the agricultural lands of village Sukhpur for the public purpose of 'Uben Irrigation Scheme'. Notification under Section 4(1) of the Act was published on January 4, 1979. After following the usual procedure under the Act, declaration under Section 6 of the Act was made, which was published in the Government Gazette on December 7, 1979. Notice under Section 9 of the Act was served on the persons interested and, after hearing the persons interested, i.e. the land owners, and, after perusing the material placed before him, the Land Acquisition Officer made his award on July 13, 1981 and offered compensation for the acquired lands at the rate of Rs.130/- per Are for bagayat land and Rs.90 per Are for jirayat land. The Land Acquisition Officer offered compensation for the standing trees as detailed in his award.

3. Being aggrieved by and feeling dissatisfied with the award of the Land Acquisition Officer, the respondents-original claimants filed an application under Section 18 of the Act requiring the Land Acquisition Officer to refer the application to the District Court, Junagadh, for the determination of the market value of the acquired lands and for award of compensation for the trees. The said application was, accordingly, forwarded to the District Court, Junagadh, which came to be numbered as Land Reference Case No.2 of 1985. The claimants before the Reference Court claimed compensation for the acquired lands at the rate of Rs.5000 per bigha. The claimants also claimed compensation for pipeline, wells and standing trees which were fruit bearing trees. The total claim made by the claimants before the Reference Court was Rs.4,25,565.33 ps. The appellant contested the application of the claimants for enhancement of the compensation by filing their reply at Exh.27, inter alia, contending that the reference application was time-barred. It was contended that the Land Acquisition Officer while offering compensation for the acquired lands and trees standing on the lands had taken into consideration all the relevant materials and the market price prevalent on the date of the

notification and had offered a just and adequate compensation. It was contended that the compensation claimed by the respondents was excessive and exaggerated and the application is required to be dismissed. On the basis of the rival pleadings of the parties, the Reference Court framed issues at Exh.9. The respondents, in support of their claim, examined (1) Ghunsa Dharmashi at Exh.23, (2) Pancha Nanji Exh.24, and (3) Jivraj Kana at Exh.25. The appellant examined (1) Shailendra Kanjibhai Lakhatariya at Exh.29, (2) Hasmukh Vrijibhai Kacha at Exh.35 and (3) Yogesh Chhotalal Jani at Exh.36. The respondents-claimants also produced documentary evidence in the nature of revenue records of the acquired lands and previous award of the learned Extra Assistant Judge, Junagadh, in Land Reference Case No. 17 of 1980, at Exh.12.

4. The Reference Court, on appreciation of oral as well as documentary evidence, and the arguments advanced by the learned counsel for the parties, determined the market value of the acquired lands treating them as bagayat land and following the previous award Exh.12, at Rs.250/- per Are on the date of the notification under section 4(1) of the Act. The Reference Court awarded compensation of Rs.8000 for each well standing on the lands bearing Survey No.6/1 and Survey No.5. The Reference Court awarded compensation for the pipeline situated on the acquired lands at the rate of rs.3.25 per running feet. The Reference Court also awarded Rs.300 each for machine foundation and Rs.300 for kundies erected on the acquired lands. The Reference Court awarded compensation at the rate of Rs.500/- for each non-bearing fruit tree, totalling Rs.2000 for four non-bearing fruit trees standing on Survey No.5. The Reference Court further awarded Rs.10,000/- as compensation for one mango tree standing on Survey No.5. The Reference Court extended statutory benefits under Section 23(1-A), solatium under Section 23(2) and interest on the amount of compensation at the rate of 9% per annum for the first year and for the subsequent years at the rate of 15% per annum, which has given rise to filing of this appeal by the State of Gujarat.

5. The learned Assistant Government Pleader, Mr. B.Y. Mankad, for the appellant, and learned advocate Ms. Mita S. Panchal for M/s. Nanavati Advocates for the respondents, have taken us through the entire record and proceedings of the appeal.

6. Learned AGP, Mr. Mankad, has vehemently submitted that the Reference Court had erred in relying

upon the previous award Exh.12 for the purpose of determination of the market value of the present acquired lands. It is submitted that the claimants had not led sufficient evidence for determination of the market value of the acquired lands and, therefore, the Reference Court had erred in determining the market value of the acquired lands at the rate of Rs.250/- per Are. In our opinion, the submission of the learned AGP deserves to be rejected. It is well settled that previous award of the Reference Court in respect of similar lands of the same village or nearby village and which has become final between the parties can be relied upon for the purpose of ascertaining market value of the lands acquired subsequently from the same village. The Reference Court, in absence of any other evidence in the nature of sale instance or opinion of expert with regard to acquired lands, relied upon previous award Exh.12 for determination of market value of the present acquired lands. The previous award Exh.12 was in respect of the lands of the same village Sukhpur which came to be acquired for the same public purpose of Uben Irrigation Scheme. The date of notification issued under Section 4(1) for acquired lands under the previous award Exh.12 was February 22, 1979, whereas the notification under Section 4(1) for the present acquired lands was published on January 4, 1979. Therefore, the notifications in both the cases were issued in near proximity of time. The lands under award Exh.12 were having similar fertility and were similar and comparable in all respects with the present acquired lands. Both the lands were situated in the same village Sukhpur. In the award Exh.12, the Reference Court, after taking into consideration all the relevant materials placed before it, had determined the market value of the acquired lands of village Sukhpur as on February 22, 1979 at the rate of Rs.250/- per Are. It is not brought to the notice of this Court that the award Exh.12, rendered in Land Reference Case No. 17 of 1980 was challenged in the higher forum. Therefore, we have no hesitation in holding that the determination of market value of the acquired lands of village Sukhpur at the rate of Rs.250/- per Are for bagayat land, and Rs.166/for jirayat land had become final. In the present appeal, the Reference Court had treated all the acquired lands as bagayat land and, therefore, we are only concerned with the determination of the market value of bagayat land. The Reference Court, in our view, had not committed any error in placing reliance on the previous award Exh.12 for the purpose of determination of the market value of the present acquired lands, which were bagayat lands, at the rate of Rs.250/- per Are.

7. The learned AGP has vehemently submitted that the Reference Court had erred in awarding separate compensation for the wells situated on the acquired lands bearing Survey No.6/1 and Survey No.5. It is submitted that, when the land was treated as bagayat land, no separate compensation can be awarded for the well situated on that land, in view of the judgments of the Supreme Court (1) in the case of O. Janardhan Reddy vs. Spl. Dy. Collector, A.P., reported in AIR 1995 Supreme Court 186; (2) in the case of Special Land Acquisition Officer vs. Virupax Shanker Nadagouda, reported in (1996) 6 Supreme Court Cases 124; and (3) in the case of State of Bihar vs. Madheshwar Prasad, reported in (1996) 6 Supreme Court Cases 197. In the abovereferred to decisions, the Supreme Court has held that, if the well is used for irrigation of the lands, it cannot be separately valued, and the claimants are not entitled to claim compensation for the well if the lands are treated as irrigated lands. The learned advocate for the respondents has not been able to challenge the principle laid down by the Supreme Court that no separate compensation can be awarded for the well if the lands are treated as bagayat land or irrigated land. Therefore, the award of the Reference Court with regard to separate compensation for two wells, situated on the lands bearing Survey No.6/1 and Survey No.5, deserves to be quashed and set aside.

8. The learned AGP has also submitted that the Reference Court had erred in awarding compensation for the pipelines laid for irrigating the lands through the water from the well. The learned AGP has submitted that the claimants had not led sufficient evidence for compensation of pipeline and, therefore, the claim of compensation for pipeline deserves to be disallowed. In our view, the claimants, in their oral evidence, had deposed that they had incurred expenses of Rs.4500/- and Rs.2500/- for laying pipelines of 1400 running feet. The cost of laying pipeline per running feet would be Rs.3,25 ps. When the lands were acquired compulsorily, some compensation shall have to be paid for pipeline which was laid for irrigating the acquired lands. The Reference Court had awarded compensation for the pipeline at the rate of Rs.3.25 ps per running feet. There is no evidence as to when the said pipeline was laid by the claimants on the acquired lands. In the absence of any evidence, in our view, taking the depreciation factor into consideration while assessing the compensation for pipeline, in the facts and circumstances of the case, the claimants would be entitled to Rs.2.00 per running feet for the pipeline. The compensation awarded for machine

foundation and kundies is just and adequate and does not warrant any interference.

9. The learned AGP has vehemently submitted that, when the lands were treated as bagayat lands, no separate compensation can be awarded for the trees standing on the acquired lands on the basis of 'yield method'. The learned AGP, in support of the submission, has placed reliance on the decision of the Supreme Court in the case of Koyappathodi M. Ayisha Umma vs. State of Kerala, reported in AIR 1991 Supreme Court 2027, wherein, the Supreme Court, in paragraph 6, has held as under:

""It is thus settled law that in evaluating the market value of the acquired property, namely, land and the building or the lands with fruit bearing trees standing thereon, value of both would not constitute one unit; but separate units; it would be open to the Land Acquisition Officer or the Court either to assess the lands with all its advantages as potential value and fix the market value thereof or where there is reliable and acceptable evidence available on record of the annual income of the fruit bearing trees the annual net income multiplied by appropriate capitalisation of 15 years would be the proper and fair method to determine the market value but not both. In the former case the trees are to be separately valued as timber and to deduct salvage expenses to cut and remove the trees from the land. In this case the award of compensation was based on both the value of the land and trees. Accordingly, the determination of the compensation of the land as well as trees is illegal. The High Court laid the law correctly."

Relying on the principle laid down by the Supreme Court in Koyappathodi M. Ayisha Umma (supra), when the Reference Court had treated the acquired lands as bagayat lands, no separate compensation can be awarded to the claimants for the fruit bearing trees standing on the acquired lands. The learned AGP has also invited our attention to the judgment of the Apex Court in the case of State of Haryana vs. Gurcharan Singh and another, reported in 1995 Supp (2) Supreme Court Cases 637, wherein, the Supreme Court has laid down the principle that it is settled law that at the time of determining compensation for the lands as well as fruit bearing trees, the lands and the fruit bearing trees cannot be separately assessed. It is further laid down that when the land is treated on the basis of the yield derived from it, no separate compensation can be made for fruit bearing trees. The Apex Court further held that definition of 'land' includes the benefits which accrued from the land as defined in Section 3(a) of the Act.

10. In view of the principles laid down by the Supreme Court in the abovereferred to two decisions, in our opinion, the Reference Court had erred in awarding separate compensation for mango trees at the rate of Rs.10,000 per tree by adopting a multiplier of 20, which is uncalled for. In our opinion, the claimants would be entitled to compensation of Rs.500/- per mango tree being timber value of the tree. The compensation awarded for non-fruit bearing trees at the rate of Rs.500/- per tree also deserves to be quashed and set aside in view of the decisions of the Supreme Court in the cases of Koyappathodi M. Ayisha Umma (supra), and Gurcharan Singh (supra) and in view of the common judgment and order rendered by the Division Bench of this Court in First Appeals Nos.3375 of 1997 with First Appeals Nos.3375 to 3790 of 1997. For non-fruit bearing trees, the respondents-claimants would be entitled to compensation at the rate of Rs.250 per tree.

11. The other mistake committed by the Reference Court in extending statutory benefit in favour of the claimants under Section 23(1-A) of the Act, also deserves to be quashed and set aside in view of the decision of the Supreme Court in the case of Union of India & Others vs. Filip Tiago De Gama of Vedem Vasco De Gama, 1990 (1) SCC 277. In the case of Filip Tiago De Gama of Vedem Vasco De Gama (supra), the Supreme Court has held that, if the acquisition proceedings commenced and the award was made by the Collector prior to April 30, 1982, the claimants would not be entitled to get the benefit under Section 23(1-A) of the Act. The Supreme Court, in the above decision, has further held as under:

"Entitlement of additional amount provided under Section 23(1-A) depends upon pendency of acquisition proceedings as on April 30, 1982 or commencement of acquisition proceedings after that date. Section 30 sub-section 1(a) provides that additional amount provided under Section 23(1-A) shall be applicable to acquisition proceedings pending before the Collector as on April 30, 1982 in which he has not made the award before that date. If the Collector has made the award before that date then, that additional amount cannot be awarded. Section 30 sub-section (1)(b) provides that Section 23(1-A) shall be applicable to every acquisition proceedings commenced after April 30, 1982 irrespective of the fact whether the Collector has made an award or not before September 23, 1984. The final point to note is that Section 30 sub-section (1) does not refer to court award and the court award is used only in Section 30 sub-section (2)."

The Land Acquisition Officer had made award on

July 13, 1981 i.e. much prior to introduction of the amended provision of Section 23(1-A) of the Act which came on the Statute on September 24, 1984. Even the claimants cannot claim the benefit of transitory provision, i.e. for the period from April 30, 1982 to September 24, 1984. Therefore, the extension of statutory benefit under Section 23(1-A) of the Act in favour of the claimants deserves to be quashed and set aside. The other statutory benefits extended in favour of the claimants under Section 23(2) and enhanced rate of interest at the rate of 9% per annum for the first year and for the subsequent years at the rate of 15% per anum do not call for any interference.

12. As a result of foregoing reasons, the appeal filed by the appellants is partly allowed. The determination of the market value of Rs.250/- per Are for the acquired bagayat land of village Sukhpur, Taluka Bhesan, District Junagadh, as on January 4, 1979, is hereby confirmed. The judgment and award dated February 9, 1988, passed by the learned Extra Assistant Judge, Junagadh, in Land Reference Case No.2 of 1985 is modified to the extent as under:

(a) The award of the Reference Court with regard to separate compensation for two wells, situated on the lands bearing Survey No.6/1 and Survey No.5, is quashed and set aside.

(b) The claimants would be entitled to compensation for pipeline at the rate of Rs.2.00 per running feet, instead of Rs.3.25 ps per running feet as awarded by the Reference Court.

(c) The claimants would be entitled to compensation for the standing mango trees at the rate of Rs.500/- per mango tree being timber value of the tree, instead of Rs.10,000/- per mango tree as awarded by the Reference Court.

(d) The claimants would be entitled to compensation for the standing non-fruit bearing trees at the rate of Rs.250/- per tree, instead of Rs.500/- per tree as awarded by the Reference Court.

(e) The statutory benefit under Section 23(1-A) granted by the Reference Court in favour of the respondents on the amount of the compensation is hereby quashed and set aside.

(f) The compensation awarded for machine foundation and kundies is just and adequate, and is hereby confirmed.

(g) The other statutory benefits granted under Section 23(2) awarding solatium at the rate of 30%, and interest as per the amended Section 28 are hereby

confirmed.

The award be modified accordingly. There shall be no order as to costs.

April 17, 2002 (M.H. Kadri, J.)

(K.A. Puj, J.)

(swamy)